

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

UNITED STATES OF AMERICA		DOCKET 4:18-CR-69(7)
		JULY 11, 2019
VS.		10:35 A.M.
JOSE HERRERA-ESCARENO		BEAUMONT, TEXAS

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VOLUME 1 OF 1, PAGES 1 THROUGH 16

REPORTER'S TRANSCRIPT OF VIDEO SENTENCING

BEFORE THE HONORABLE MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

FOR THE GOVERNMENT: WILLIAM TATUM  
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FOR THE DEFENDANT: JOHN HELMS, JR.  
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1 COURT REPORTER: RUTH C. WEESE, RDR-CSR  
2 FEDERAL OFFICIAL REPORTER  
3 300 WILLOW, SUITE 104  
4 BEAUMONT, TEXAS 77701  
5  
6 PROCEEDINGS REPORTED USING COMPUTERIZED STENOTYPE;  
7 TRANSCRIPT PRODUCED VIA COMPUTER-AIDED TRANSCRIPTION.  
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1 (OPEN COURT, DEFENDANT PRESENT.)

2 THE COURT: Finally this is No. 4:18-CR-69  
3 (7), *United States of America versus Jose*  
4 *Herrera-Escareno*. Are you ready to proceed?

5 MR. TATUM: William Tatum for the Government,  
6 Your Honor. We are ready to proceed.

7 MR. HELMS: John Helms for Mr.  
8 Herrera-Escareno and we are ready to proceed.

9 THE COURT: And has the Defendant signed the  
10 video waiver form?

11 MR. HELMS: He has, Your Honor.

12 THE COURT: And let the record reflect this is  
13 being translated into Spanish for the benefit of the  
14 Defendant. Has the presentence report been read to the  
15 Defendant in Spanish?

16 MR. HELMS: It has, Your Honor.

17 THE COURT: Have counsel and the Defendant  
18 read and discussed the presentence report, including any  
19 revisions?

20 MR. HELMS: We have, Your Honor.

21 THE COURT: Has counsel fully explained the  
22 report to the Defendant?

23 MR. HELMS: Yes, Your Honor.

24 THE COURT: Mr. Herrera-Escareno, do you fully  
25 understand the presentence report?

1 THE DEFENDANT: Yes.

2 THE COURT: Does counsel or the Defendant wish  
3 to make any comments, additions or corrections to the  
4 report?

5 MR. HELMS: Your Honor, we have two  
6 objections. Other than that, no.

7 THE COURT: We'll get to that in a moment.  
8 Mr. Herrera-Escareno, does the report adequately cover  
9 your background?

10 THE DEFENDANT: Yes.

11 THE COURT: Has the Government read the report  
12 and does it wish to make any comments, additions or  
13 corrections?

14 MR. TATUM: The Government has read the  
15 report, Your Honor. We have no comments, additions or  
16 corrections.

17 THE COURT: You do have objections. Do you  
18 wish to argue those objections then?

19 MR. HELMS: Yes, Your Honor.

20 THE COURT: Go ahead.

21 MR. HELMS: May I proceed?

22 THE COURT: Yes.

23 MR. HELMS: There are two objections; one is  
24 for the importation of methamphetamine enhancement. As  
25 the Court is aware, this Defendant was arrested because

1 he was transporting money. He admitted to doing it on  
2 two other occasions. But there's no evidence that he was  
3 aware that anything was being imported or that he had  
4 anything to do with the importation. He was just  
5 carrying money.

6 Now, obviously he has pled guilty; he  
7 understands that that is a crime. But he had nothing to  
8 do with and did not conspire with people to import. The  
9 other objection --

10 THE COURT: But you understand the case law  
11 doesn't require that. It doesn't show he has to have  
12 knowledge, it just has to show that it was, in fact,  
13 imported from Mexico and I think there was evidence in  
14 the record that it was.

15 MR. HELMS: Well, I understand that it may  
16 have been imported at some time. My understanding of the  
17 case law is that it is not sort of a strict liability  
18 issue where if it was imported at any time, say in the  
19 last 20 years, handed around and eventually got to  
20 someone that that means that they get the enhancement.

21 But this sort of feeds into my second  
22 argument. Because the guidelines for the importation of  
23 meth say that the offense has to involve importation.  
24 And if you cast the net that wide so that his offense  
25 where his conduct was just carrying money from one person

1 to another, if that includes importation, then he's  
2 really at a minor role. And the guidelines are -- I  
3 think this -- according to the comment of the guidelines,  
4 this is a classic minor role case. Application note 3 to  
5 Section 3B1.2 says for example, a Defendant who is  
6 convicted of a drug trafficking offense whose  
7 participation in that offense was limited to transporting  
8 or storing drugs and who is accountable under Section  
9 1B1.3 only for the quantity of drugs the Defendant  
10 personally transported or stored may receive an  
11 adjustment under this guidelines.

12 In this case he didn't even transport or store  
13 drugs; it was just money. So I mean I think this is --  
14 especially if you are going to say that his offense  
15 somehow involved importing meth. He should get a minor  
16 role adjustment because all he did was transport money.  
17 I think it's even conceivable that people would not  
18 understand that taking money, because money is not  
19 illegal from one place to another and would not be a  
20 crime. That's not an excuse. That doesn't mean it is  
21 not a crime, but it does illustrate how his role in this  
22 was very minor. There was no evidence that he had any  
23 decision-making authority, that he was involved in any  
24 planning or the other things that the comments on this  
25 section of the guidelines reference.

1           So we would ask that the Court sustain the  
2 objection for importation of meth and for minor role in  
3 the offense.

4           THE COURT: Does the Government wish to  
5 respond?

6           MR. TATUM: Yes, Your Honor. As to really  
7 both objections, we have asked the Court to overrule  
8 them. This drug trafficking organization did originate  
9 out of Mexico. I believe that was the information that  
10 was provided by law enforcement and this Defendant  
11 contacted cooperating Defendants to coordinate the  
12 delivery of currency to another on behalf of another  
13 co-conspirator. He did it on I believe three occasions  
14 that he admitted to. And as the PSR does point out, he  
15 does not have to have knowledge of the methamphetamine  
16 importation.

17           At the same time, he is part of this drug  
18 trafficking organization and he did this offense and  
19 that's where the methamphetamine came from. So I believe  
20 that that objection should be overruled just based on the  
21 case law.

22           As far as his minor role, yes, he did admit to  
23 delivering the money, picking it up on behalf of the  
24 conspiracy and then taking it to other unknown  
25 conspirators and that that was the Ft. Worth area.

1           Although just money, the whole point of the  
2 drug trafficking organization or operation is to make  
3 money. That's the whole reason that these people ever  
4 conspire to sell methamphetamine. So the calling  
5 individuals to collect the money and then distributing it  
6 to other co-defendants is just as important as delivering  
7 the drugs themselves. Without the money the conspiracy  
8 doesn't exist. And so I think the fact that he was able  
9 to go and pick up this money, that he had that authority  
10 to do it on his own, coordinate the pickup of the money  
11 and then distribute it to other co-defendants should not  
12 get him a minor role in this conspiracy.

13           THE COURT: I agree. I think the money is  
14 what makes it all go around. There wouldn't be  
15 importation or this whole thing wouldn't happen without  
16 the monetary incentive to do that. So I don't think that  
17 it should be downplayed because he transported money.  
18 And it looks like he contacted a cooperating defendant to  
19 coordinate the delivery of \$10,000 from the Defendant to  
20 him and then on behalf of another conspirator, it's all  
21 wrapped up and an integral part of this drug trafficking  
22 conspiracy of the methamphetamine that was being imported  
23 from Mexico. And he did it on several occasions.

24           So I don't think -- I think his participation  
25 was that of an average participant. I don't think it was



1 a minor role. So that's denied. And he doesn't have to  
2 know that it was imported. I suspect he did know, but  
3 there was certainly evidence in the record that the  
4 methamphetamine was from Mexico; so that objection  
5 doesn't work. So that's overruled, both objections are  
6 overruled.

7 To the extent the Court previously deferred  
8 acceptance of the plea agreement, it is now accepted and  
9 the judgment and sentence will be consistent with it.  
10 The Court finds the information contained in the  
11 presentence report has sufficient indicia of reliability  
12 to support its probable accuracy.

13 The Court adopts the factual findings,  
14 undisputed facts and guideline applications in the  
15 presentence report. Based upon a preponderance of the  
16 evidence presented and the facts in the report, while  
17 viewing the Sentencing Guidelines as advisory, the Court  
18 concludes that the total offense level is 33, the  
19 criminal history level is I, which provides for an  
20 advisory guideline range of 135 to 168 months. Does  
21 defense counsel wish to make any remarks?

22 MR. HELMS: Yes, Your Honor. May I proceed?

23 THE COURT: Yes.

24 MR. HELMS: Your Honor, there are several  
25 other people, other Defendants in this case, one of whom

1 has not been sentenced yet and others who are, I assume,  
2 because they are still sealed, still out there. I  
3 suspect that their roles will be much greater than Mr.  
4 Herrera-Escareno. And although, of course, money is  
5 important, I really think when you compare his conduct to  
6 other people who were involved in deciding where the  
7 drugs would go, benefitting financially, he would be  
8 certainly one of the least involved. And so although the  
9 Court has overruled the objection for a minor  
10 participant, given his limited role, given his lack of  
11 criminal history, I would ask the Court to sentence him  
12 at the lowest end of the guidelines range.

13 THE COURT: Does the Defendant wish to make a  
14 statement?

15 THE DEFENDANT: Yes. I would like to  
16 apologize for what I have done for having committed this  
17 crime. And I apologize; I would like to say that. I  
18 would also like to apologize to my family for having made  
19 such a poor decision. And thank you very much and I have  
20 made that decision and I'll accept it and may God be with  
21 you.

22 THE COURT: All right. Does the attorney for  
23 the Government wish to make any remarks?

24 MR. TATUM: No, Your Honor.

25 THE COURT: Does counsel know of any reason

1 why sentence should not be imposed at this time?

2 MR. HELMS: No, Your Honor.

3 MR. TATUM: No, Your Honor.

4 THE COURT: Pursuant to the Sentencing Reform  
5 Act of 1984, having considered the factors noted in 18  
6 U.S.C., Section 3553(a) and after having consulted the  
7 advisory Sentencing Guidelines, it is the judgment of the  
8 Court that the Defendant, Jose Herrera-Escareno, also  
9 known as Nacho, is hereby committed to the custody of the  
10 Bureau of Prisons to be imprisoned for 135 months on  
11 Count 1 of the indictment.

12 The Court recommends to the Bureau of Prisons  
13 that the Defendant receive appropriate drug treatment  
14 while imprisoned. The Court finds that the Defendant  
15 does not have the ability to pay a fine. The Court will  
16 waive the fine in this case. It is ordered the Defendant  
17 must pay the United States a special assessment of \$100  
18 which is due and payable immediately.

19 The Defendant is ineligible for all federal  
20 benefits listed in 21 U.S.C. Section 862(d) for a period  
21 of one year from the date of this order.

22 After reviewing the facts and circumstances of  
23 this case as well the personal history and  
24 characteristics of the Defendant, the Court believes an  
25 imposition of supervised release is warranted in this

1 case. A period of supervised release will provide an  
2 added measure of deterrence from future criminal conduct  
3 as well as provide protection to the community.

4           Upon release from imprisonment, the Defendant  
5 shall be on supervised release for a term of two years.  
6 Within 72 hours of release from the custody of the Bureau  
7 of Prisons, the Defendant must report in person to the  
8 probation office in the district to which the Defendant  
9 is released. The Defendant must not commit another  
10 federal, state or local crime and must comply with the  
11 standard conditions that have been adopted by this court.

12           In addition, the Defendant must comply with  
13 all applicable mandatory conditions and the following  
14 special conditions: As a condition of supervised release  
15 immediately upon release from confinement the Defendant  
16 shall be surrendered to a duly authorized immigration  
17 official for deportation proceedings in accordance with  
18 the established procedures provided by the Immigration  
19 and Nationality Act, 8 U.S.C. Section 1101, et seq. If  
20 ordered deported the Defendant must remain outside the  
21 United States. In the event that the Defendant is not  
22 deported or for any reason re-enters the country after  
23 having been deported, the Defendant must comply with all  
24 conditions of supervised release to include reporting to  
25 the nearest United States probation office within

1 72 hours of release by immigration officials or re-entry  
2 into the country.

3           The Defendant must provide the probation  
4 officer with access to any requested financial  
5 information for purposes of monitoring the Defendant's  
6 efforts to obtain and maintain lawful employment.

7           The Court finds this to be a reasonable  
8 sentence in view of the nature and circumstances of the  
9 offenses entailing the Defendant's participation in a  
10 drug trafficking conspiracy involving the distribution of  
11 between 15 and 45 kilograms of a mixture or substance  
12 containing a detectable amount of methamphetamine or  
13 between 1.5 and 4.5 kilograms of methamphetamine actual,  
14 his transporting money proceeds of drug transactions to  
15 and from co-conspirators who were involved in the  
16 distribution of methamphetamine that was imported from  
17 Mexico, his contacting a cooperating Defendant to  
18 coordinate the delivery of \$10,000 in currency from the  
19 cooperating Defendant to himself on behalf of a fellow  
20 conspirator in March 2018, his meeting the cooperating  
21 Defendant at a Denny's restaurant where the cooperating  
22 Defendant provided him a plastic bag containing \$10,000,  
23 his admitting to picking up drug proceeds in amounts of  
24 \$5,000 and \$10,000 on three occasions which he delivered  
25 to unknown co-conspirators, his illegal presence in the

1 United States and his history of substance abuse.

2           It will serve as just punishment, promote  
3 respect for the law, and deter future violations of the  
4 law. Although the Court finds the guideline calculations  
5 announced at the sentencing hearing to be correct, to the  
6 extent they were incorrectly calculated, the Court would  
7 have imposed the same sentence without regard to the  
8 applicable guideline range in light of the factors set  
9 forth in 18 U.S.C. Section 3553(a).

10           You have a right to appeal your conviction if  
11 you believe that your guilty plea was somehow unlawful or  
12 involuntary or there is some other fundamental defect in  
13 the proceedings that was not waived by your guilty plea.  
14 You have a statutory right to appeal your sentence under  
15 certain circumstances, particularly if you think the  
16 sentence is contrary to law.

17           A Defendant, however, may waive those rights  
18 as part of a plea agreement; and you've entered into a  
19 plea agreement which waives certain rights to appeal your  
20 conviction and sentence. With the exception of the  
21 reservation of the right to appeal on specified grounds  
22 set forth in the plea agreement, you've waived any  
23 appeal, including collateral appeal, of any error which  
24 may have occurred surrounding the substance, procedure,  
25 or form of the conviction and sentence in this case.

1           Such waivers are generally enforceable, but if  
2 you believe the waiver is unenforceable, you can present  
3 that theory to the appellate court. With few exceptions,  
4 any notice of appeal must be filed within 14 days of  
5 judgment being entered in your case. If you're unable to  
6 pay the cost of an appeal, you may apply for leave to  
7 appeal *in forma pauperis*. If you so request, the clerk  
8 of the court will prepare and file a notice of appeal on  
9 your behalf.

10           The presentence report is made part of the  
11 record and is placed under seal except counsel for the  
12 Government and defense may have access to it for purposes  
13 of appeal. Are there any other counts?

14           MR. TATUM: No, Your Honor, this was a single  
15 count indictment.

16           THE COURT: The Defendant is remanded to the  
17 custody of the United States Marshal and then to the  
18 custody of the United States Federal Bureau of Prisons to  
19 begin the service of sentence. Is there a particular  
20 facility you wish to request?

21           MR. HELMS: Your Honor, we would request Ft.  
22 Worth.

23           THE COURT: All right. I'll recommend Ft.  
24 Worth. If there is nothing further then you're excused.

25           (Proceedings concluded, 10:50 a.m.)

1 COURT REPORTER'S CERTIFICATION

2 I HEREBY CERTIFY THAT ON THIS DATE, JULY 18,  
3 2020, THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE  
4 RECORD OF PROCEEDINGS.

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*Ruth C. Weese*

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RUTH C. WEESE, RDR-CSR

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